IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.2603 OF 2006.

Manish Shamgopal Chorasia ..Petitioner
V/s
Union of India & Ors. .. Respondents.

Mr. G.K. Masand with Mrs/S/R/Sawant for the petitioner

Mr. Irfan Engineer i/b G.C. Mishra for respondent Nos 1 to 5.

CORAM : B.H. MARLAPALLE &
J.H. BHATIA, JJ.

DATE : 21ST NOVEMBER, 2006.

P.C.

. Heard Mr. Masand with Mrs. Sawant, the learned Counsel for the petitioner and Mr. Engineer on instructions by G.C. Mishra for respondent Nos. 1 to 5.

2. Rule.

3. Respondents waive service. Petition is taken up for final hearing forthwith.

4. The present petitioner has filed O.A. No. 453 of 2004 before the Central Administrative Tribunal,

Mumbai Bench and in the same he took out an application for amendment, which came to be registered as M.P.No. 708/2004. By an order dated 19/9/2005 the Tribunal rejected the said application and therefore, the petitioner filed Review Petition No.45/2005, which also came to be dismissed on 10th March, 2006. Hence, this petition.

5. The original application has been filed challenging the order dated 30/6/2004, by which the petitioner has been reverted from the post of Income Tax Officer to the lower post of Inspector of Income Tax, though he was promoted on Ad-hoc basis vide order dated 9.10.2002 to the post of Income Tax Officer and after selection made by the DPC in the year 2002. As per the amendment disallowed by the Tribunal, he had prayed to quash and set aside the order dated 4/2/2002 bifurcating the vacancies in the post of Income Tax officer on the ground that the bifurcation of vacancies on account of restructuring was arbitrary and discriminating.

6. The Tribunal held that if the amendment would be allowed, it would relate back to the date of O.A. and the period for limitation was one year under the

Administrative Tribunals Act, 1985. Under such circumstances, if the amendment would be granted, it would cause prejudice to the respondents and unless it was demonstrated that the order impugned by the amendment was causing injustice to the petitioner, such an amendment could not be allowed and if allowed it would amount to injustice to the respondents, noted the Tribunal.

7. We have noted that O.A. No.453/2004 was filed some time in June, 2004 and the amendment application was moved within a week or two thereafter. The amendment application was thus, within time and if the amendment application would be allowed, the respondents obviously, would have an opportunity to file the additional reply dealing with the challenge to the order sought to be referred in the amendment application. The approach of the Tribunal in the impugned order is hypertechnical and by allowing such an amendment in our considered opinion, no injustice or prejudice was likely to be caused to the respondents. The petitioner was trying to make his challenge as exhaustive as possible and he claimed that the bifurcation order was the basis of his reversion. It was therefore,necessary for the

Tribunal to allow the amendment application and consider the challenge set out in the O.A. in its totality after affording an opportunity to the respondents to file a detailed reply. However, we do not find any reason to differ with the view taken by the Tribunal in rejecting the Review Application. We are satisfied that the order dated 19/9/2005 rejecting the amendment application is not sustainable.

8. Hence, the petition succeeds and the same is hereby allowed.

9. M.P. No. 708/2004 is allowed by setting aside the order dated 19/9/2005. The amended copy of the O.A. shall be presented to the Tribunal within a period of two weeks from today and undoubtedly, the respondents are at liberty to file a counter reply or additional reply, if so desired.

10. Rule made absolute in the above terms by levying cost quantified at Rs. 500/- to the petitioner. The costs amount to be remitted to the Maharashtra State Legal Services Authority, within a period of one week by the petitioner.

(J.H. BHATIA, J.) **(B.H. MARLAPALLE, J.)**